Filed 6/8/17 In re J.J. CA1/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.J., a Person Coming Under the Juvenile Court Law.	
THE PEOPLE, Plaintiff and Respondent, v. J.J., Defendant and Appellant.	A148759 (Alameda County Super. Ct. No. HJ0800980202)

I.

INTRODUCTION

Appellant J.J. was declared a ward of the court under Welfare and Institutions Code section 602[1] for committing attempted burglary. He contends the juvenile court erred in denying his motion to dismiss the charges at the close of the prosecution's case because there was insufficient evidence to prove the crime beyond a reasonable doubt, and it applied the incorrect standard in denying the motion. He also contends the court abused its discretion in granting the prosecution a continuance to present rebuttal evidence. Finally, appellant challenges several conditions of probation: (1) the requirement he attend school regularly and obey all rules; (2) the prohibition against

[1] All subsequent references are to the Welfare and Institutions Code unless otherwise identified.

possessing illegal drugs and "associated paraphernalia" and; (3) the prohibition against possessing "any weapon," including a "replica of a firearm." We agree that the drug paraphernalia and weapons possession conditions must be modified, but otherwise affirm the dispositional order.[2]

II.

FACTUAL AND PROCEDURAL BACKGROUND

The Alameda County District Attorney's Office filed a wardship petition alleging then 15-year-old J.J. committed attempted first degree burglary pursuant to Penal Code sections 459 and 664.

A. Prosecution's Case-in-Chief

On August 10, 2015, at approximately 10:25 a.m., 12-year-old P.C. was home alone in her family's apartment. The apartment has both a front door and back door. She heard someone knocking on the front door and she stayed quiet. She next heard a noise, like a "rattling" at the back door. On cross-examination, P.C. explained that she heard a knocking at the back door, then she heard the rattling and pushing at the door. The sounds lasted for approximately five minutes. She also heard a "crack" sound like a window being opened. She thought someone was trying to come in the back door, so she called her mother. Her mother told her to call her father, which she did, and her father returned home within 5 to 10 minutes. She saw her father arrive in his car and he started to chase someone. She never saw the person at the back door, but she did see the person her father chased, and she identified him as appellant.

P.C.'s father, Hector,[3] testified that he received a call from P.C. that someone was trying to break into the rear door of their apartment. When he pulled up in his truck, he saw someone at the back door. The person started running and Hector began chasing

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[2] After oral argument, appellant filed a petition for writ of habeas corpus. We issued an order requesting a preliminary opposition. Having now reviewed the petition, opposition, and reply, we will dispose of the writ by separate order.

[3] For privacy protection purposes, we identify P.C.'s father only by his first name.

him. He said the person was wearing shorts, black and white tennis shoes, and had a backpack. Hector identified the person as J.J. in court.

Hector was on the phone with the police while he was chasing appellant on foot. Officer Neil Goodman of the San Leandro Police Department testified that when he arrived at the area of a nearby school, he encountered Hector. After getting a description of the burglary suspect, he broadcast it on the police radio and received word that Lieutenant Joe Molettieri had detained someone matching that description. He drove Hector to the area where appellant was being detained, and Hector identified appellant as the person he had chased. Hector recognized appellant's face and his clothing, although he was no longer wearing his sweatshirt or backpack. Appellant stated he was looking for Jonathan. Hector testified that his stepson Jonathan lived at the apartment, but "during those days, [Jonathan] wasn't there because he was at his father's."

When Hector returned home after the chase, he saw that the upper section of glass on the back door was off the frame. The glue around the frame had been taken off. Officer Goodman also saw the damage to Hector's apartment door, including a crack along the door frame and the separated window.

Lieutenant Molettieri testified that he received information about a residential burglary with a description of the suspect. He saw a young Black male walking through a nearby schoolyard and saw him toss his backpack underneath a car on the school grounds. Molettieri detained the person, who he identified as appellant. When he retrieved the backpack, he saw a handgun inside that turned out to be a BB gun.

Officer Goodman collected the backpack with the BB gun from Molettieri. He testified that in his experience it was not uncommon for people who commit burglaries to carry a weapon of some sort. The backpack was empty except for the gun, and Officer Goodman believed appellant planned to put any stolen items in the backpack.

B. Section 701.1 Motion

At the conclusion of the prosecution's case-in-chief, appellant made a motion pursuant to section 701.1 that the prosecutor had failed to present sufficient evidence to prove the elements of the crime beyond a reasonable doubt.

The prosecutor argued there was no question regarding identification, and that the evidence showed appellant knocked on the front door then went to the back door and was trying to get in for an extended period of time—more than five minutes. He cracked the window from the frame. He had an empty backpack and a BB gun. When Hector arrived, rather than stating that he was there to visit Jonathan, he ran. In the chase, he threw his backpack under a car.

In response, the court stated: "So I'm having trouble coming up with . . . a reasonable explanation for why this would occur other than to go in and take something. I'm going to deny the motion."

C. Appellant's Testimony

Appellant testified that he went to visit his friend Jonathan. He had his backpack with a BB gun and a charger. He had been to Jonathan's house twice before the date of the incident, once through the front door and once through the back door. He testified he was going to Jonathan's house to return Jonathan's BB gun. He thought Jonathan was home because he had texted him the day before on Kik (a texting application). He knocked for two to three minutes because he thought someone was home. He never asked for Jonathan or said his name. He never tried to text or call Jonathan. When Hector arrived, he was yelling and cursing, so appellant ran from him. He discarded his backpack because he did not want to get caught with a BB gun.

D. Motion for a Continuance

At the conclusion of appellant's testimony, the prosecutor sought a continuance. He stated: "This is the first time I heard about the origin of the BB gun, and I'd like to interview Jonathan to see if it was, in fact, true."

Defense counsel objected because Jonathan's name was in the police report and the prosecution should have interviewed him prior to trial, or before resting its case. Defense counsel argued that the prosecution had "all the time in the world" to conduct an investigation and it would be prejudicial to appellant to allow a continuance.

The court granted the continuance, stating "I think that Jonathan is an absent witness. [The prosecution] hasn't heard this story before. You haven't called Jonathan.

So I think that if Jonathan were to testify that would help me decide this case." The court stated that the prosecution had the right to call a rebuttal witness after hearing appellant's testimony. Appellant's testimony about Jonathan and the BB gun was unexpected. "It seems to me that if Jonathan corroborates that . . . that would raise a reasonable doubt in my mind. If Jonathan says that's not true, then I'd have to look at the evidence differently." The court concluded it was "important evidence" that warranted a continuance.

The court asked if the parties could return the following week, but defense counsel was out of the office, so they agreed to February 23, 2016. On that date, defense counsel again objected to the continuance, arguing the prosecution failed to exercise due diligence. The prosecution also failed to show that Jonathan's testimony would be material, or that he would be available within a reasonable time.

The prosecution argued that appellant's testimony about Jonathan providing the BB gun was unexpected. The prosecutor explained that they knew Jonathan was not at home on the day of the incident because he was staying with his father.

The court stated that the prosecution could have been more diligent, but they were still entitled to call Jonathan as a rebuttal witness to address issues that came up unexpectedly in appellant's testimony. The court also noted that there was no jury to be inconvenienced, and "the point is that this is something in response to the testimony presented by the defense and that I'll exercise my discretion to allow the continuance."

E. Rebuttal Evidence

Jonathan testified that appellant had been to his house once. On the day of the incident he was at his father's house in San Francisco. He had not had any contact with appellant by phone, text, or Kik before the incident. Jonathan testified he did not have the Kik application on his phone. He did not own a BB gun and never lent a BB gun to appellant.

The court then asked defense counsel if she required additional time to call any witnesses in rebuttal to Jonathan's testimony, and counsel stated she would like to time to conduct further investigation. The court granted the continuance.

On April 5, 2016, defense counsel recalled Hector as a witness. Hector testified that Jonathan had not told him appellant previously had been to their home.

F. Court's Decision

After hearing all the evidence, the court stated "I believe P[.C.] and Jonathan. I did not believe [appellant.] I think the damage to the door is consistent with P[.C]'s testimony about what happened to the door." Jonathan testified about not having the Kik app on his phone without knowing he had contradicted what appellant said. The court found that there was proof beyond a reasonable doubt of attempted burglary and exercised its jurisdiction over appellant.

G. Probation Conditions

The court imposed the following conditions of probation, among others: (1) "Attend school regularly. Obey school rules and regulations"; (2) "Don't use, possess, or be under the influence of alcohol or illegal drugs or possess any associated paraphernalia" and; (3) "Do not be in possession of any weapon, including firearm, explosive, knife, or replica of a firearm."

III.

DISCUSSION

A. The Trial Court Properly Denied Appellant's Motion to Dismiss at the Close of the Prosecution's Case-in-Chief

Appellant raises two interrelated arguments with respect to the section 701.1 motion. First, he argues the court improperly denied the motion because there was insufficient evidence appellant had the intent to commit attempted burglary. Second, he argues the court applied the incorrect legal standard.

Section 701.1 provides: "At the hearing, the court, on motion of the minor or on its own motion, shall order that the petition be dismissed and that the minor be discharged from any detention or restriction therefore ordered, after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by Section 601 or 602. If such a

motion at the close of evidence offered by the petitioner is not granted, the minor may offer evidence without first having reserved that right."[4]

"[T]he standard for review of the juvenile court's denial of a motion to dismiss is whether there is substantial evidence to support the offense charged in the petition. [Citation.] In applying the substantial evidence rule, we must 'assume in favor of [the court's] order the existence of every fact from which the [court] could have reasonably deduced from the evidence whether the offense charged was committed and if it was perpetrated by the person or persons accused of the offense. [Citations.] Accordingly, we may not set aside the trial court's denial of the motion on the ground of the insufficiency of the evidence unless it clearly appears that upon no hypothesis whatsoever is there sufficient substantial evidence to support the conclusion reached by the court below.' [Citations.]" (*In re Man J.* (1983) 149 Cal.App.3d 475, 482.)

Appellant argues that the prosecution failed to present sufficient evidence that he had the requisite intent for attempted burglary. "Attempted burglary requires two elements: (1) the specific intent to commit burglary and (2) a direct but ineffectual act toward its commission. [Citation.]" (*People v. Mejia* (2012) 211 Cal.App.4th 586, 605.)

Appellant argues it was mere speculation that he intended to break into the apartment and commit a crime. Appellant contends P.C.'s testimony about hearing knocking, rattling, and pushing sounds for several minutes did not establish appellant's attempt to break in to the apartment. Appellant was knocking on the door in an attempt to see his friend Jonathan. The fact that appellant ran away as Hector approached him only showed that he was afraid of Hector. Neither the running nor the tossing of his backpack showed consciousness of guilt because there were other explanations for his actions. Finally, the BB gun remained in the backpack the entire time, suggesting appellant did not intend to use it.

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[4] Section 701.1 is interpreted similarly to Penal Code section 1118.1. (*In re Anthony J.* (2004) 117 Cal.App.4th 718, 727.)

Appellant's arguments are unavailing. Intent to commit burglary may be shown by all of the surrounding circumstances, including appellant's actions. (*People v. Holt* (1997) 15 Cal.4th 619, 669 [" ' "While the existence of the specific intent charged at the time of entering a building is necessary to constitute burglary in order to sustain a conviction, this element is rarely susceptible of direct proof and must usually be inferred from all of the facts and circumstances disclosed by the evidence." [Citation.]' [Citation.]"].)

P.C. testified she heard someone knock on the front door and then when she did not answer, she heard knocking, rattling and pushing on the back door. She heard a "crack" at the window attached to the door. Hector and Officer Goodman testified that the window was separated from the window frame. The glue around the frame had been taken off. The court could reasonably infer that appellant was attempting to gain access to the apartment by removing the window pane to the back door.

When Hector arrived home he saw someone at the back door, and when appellant saw Hector he ran away. While there were competing explanations for appellant's flight, one reasonable inference was that he fled to avoid apprehension for his wrongful attempt. This inference constituted circumstantial evidence of his intent to commit burglary. (*People v. Jordan* (1962) 204 Cal.App.2d 782, 786; *People v. Frye* (1985) 166 Cal.App.3d 941, 947 ["sudden flight upon discovery support the inference [the defendant] entered with the intent to steal"].)

When Lieutenant Molettieri approached appellant, he threw his backpack under a car. Appellant had a backpack that was empty except for a BB gun. Officer Goodman testified that in his experience, people who commit burglaries often carry a weapon of some sort and carry an empty backpack to hold any stolen items.

All of the testimony taken together provides substantial evidence to support the juvenile court's decision to deny the section 701.1 motion.

Appellant's next argument is the juvenile court applied the incorrect standard of proof in ruling on the section 701.1 motion. The trial court must "weigh the evidence, evaluate the credibility of witnesses, and determine that the case against the defendant is

'proved beyond a reasonable doubt before [the defendant] is required to put on a defense.' [Citation.]" (*In re Andre G.* (1989) 210 Cal.App.3d 62, 66, fn. omitted (*Andre G.*).)

Defense counsel made a motion that the prosecution had failed to prove the issue of intent beyond a reasonable doubt. The prosecutor then outlined all of the evidence presented and the court reviewed its notes. The court stated: "I'm having trouble coming up with . . . a reasonable explanation for why this would occur other than to go in and take something. So I'm going to deny the motion."

Appellant contends the court improperly shifted the burden to him to produce an innocent explanation for his conduct.

In *Andre G.*, Andre argued the court applied the incorrect legal standard in denying a section 701.1 motion. (*Andre G., supra,* 210 Cal.App.3d at p. 65.) The juvenile court stated that the section 701.1 motion was like a nonsuit in a civil case. (*Ibid.*) Division One of this court concluded that the court's reference to civil motion did not mean the court was employing the incorrect standard. (*Ibid.*) Andre's counsel apprised the court of the beyond a reasonable doubt standard in raising the motion and "[t]he appropriate burden of proof was never an issue during appellant's trial." (*Ibid.*) The court followed "the general rule that presumes a trial court has applied the proper standard where there is no articulation of the standard used. [Citation.]" (*Ibid.*)

The same is true here. We do not presume the juvenile court applied the incorrect legal standard. The court denied the motion based on its conclusion that the only reasonable explanation for appellant's conduct was he intended to burglarize the apartment. The court's statement that it could not come up with any other explanation does not evidence it was shifting the burden to appellant; it simply demonstrates the court's belief that the prosecution had sufficient evidence that appellant intended to burglarize the apartment beyond a reasonable doubt. In making the motion, defense counsel stated the standard as beyond a reasonable doubt and the applicable burden was not an issue.

We also presume the court applied the correct standard in ruling on the motion. " ' "A judgment or order of the lower court is presumed correct. All intendments and presumptions are indulged to support it on matters as to which the record is silent, and error must be affirmatively shown." ' " (*People v. Leonard* (2014) 228 Cal.App.4th 465, 478, italics omitted, quoting *Denham v. Superior Court* (1970) 2 Cal.3d 557, 564.) "It is a basic presumption indulged in by reviewing courts that the trial court is presumed to have known and applied the correct statutory and case law in the exercise of its official duties. [Citations.]" (See *People v. Mack* (1986) 178 Cal.App.3d 1026, 1032.)

B. The Trial Court Did Not Err in Granting the Prosecution a Continuance to Interview a Rebuttal Witness

Appellant argues that the court erred in granting the prosecution a continuance to interview Jonathan after appellant testified. Appellant contends the prosecution failed to establish good cause for the continuance, and the error was prejudicial.

Under section 682, a juvenile court may grant a continuance upon a showing of good cause. (§ 682, subd. (b).) "The determination of whether good cause exists is left to the sound discretion of the trial court. [Citation.]" (*In re Maurice E.* (2005) 132 Cal.App.4th 474, 481.) "The decision whether to grant a continuance of a hearing to permit counsel to secure the presence of a witness rests in the sound discretion of the trial court." (*People v. Roybal* (1998) 19 Cal.4th 481, 504.) To establish good cause for a continuance, the moving party must show it " 'exercised due diligence to secure the witness's attendance, that the witness's expected testimony was material and not cumulative, that the testimony could be obtained within a reasonable time, and that the facts to which the witness would testify could not otherwise be proven.' [Citation.]" (*Ibid.*)

Appellant argues at length the prosecutor did not meet the legal requirements for the court to grant a continuance. Appellant contends the court abused its discretion by failing to require the prosecution to provide a proffer that Jonathan would present material, noncumulative testimony and that the prosecutor could locate and subpoena Jonathan in a reasonable amount of time.

The prosecutor requested a short continuance to interview Jonathan in response to appellant's testimony that he was at the apartment to return Jonathan's BB gun. The prosecutor stated it was the first time he heard about the proffered origin of the BB gun. Defense counsel objected because the prosecution had not exercised due diligence, arguing that Jonathan's name was in the police report and the prosecution should have interviewed him prior to trial. Defense counsel further argued the prosecution failed to show that Jonathan's testimony would be material, or that he would be available within a reasonable time.

The juvenile court did not abuse its discretion in finding good cause to continue the hearing. The court addressed the issue of diligence, acknowledging the prosecutor could have been more diligent, but also recognizing that appellant's testimony about the BB gun was unexpected. Appellant argues the prosecution knew, prior to trial, that appellant stated he was going to the apartment to visit Jonathan. While this may be true, the prosecution had no reason to expect appellant to testify that the BB gun in his backpack belonged to Jonathan; and even if the prosecutor had interviewed Jonathan, he would have had no reason to ask him about the BB gun. Additionally, the prosecutor explained he had not interviewed Jonathan because he knew Jonathan was not at home on the day of the incident because he was staying with his father.

The court also addressed the materiality of the testimony, concluding Jonathan could provide "important evidence" that could help decide the case. Appellant makes much of the fact the prosecutor did not proffer how Jonathan's testimony would be material, but this is a hollow argument. It was readily apparent to the parties and the court that Jonathan could confirm or deny appellant's entire testimony about ownership of the BB gun and the reason he had it with him when he was at the apartment. The court explained that the prosecution had the right to call a rebuttal witness after hearing appellant's unexpected testimony about the BB gun. The court noted that "if Jonathan corroborates that . . . that would raise a reasonable doubt in my mind. If Jonathan says that's not true, then I'd have to look at the evidence differently." The testimony was not

cumulative because nobody else had provided testimony about whether Jonathan was, in fact, the owner of the BB gun.

Neither party raised the issue of whether the testimony could be obtained in a reasonable amount of time, as this did not seem to be a concern. The court noted there was no jury to be inconvenienced by a continuance. The prosecution agreed to appear the following week, but it was defense counsel who sought a longer continuance of three weeks due to her unavailability.

Finally, there was no other witness that could provide the necessary testimony. Only Jonathan could corroborate appellant's testimony about the BB gun. The court granted the continuance, stating "I think that Jonathan is an absent witness. [The prosecution] hasn't heard this story before. You haven't called Jonathan. So I think that if Jonathan were to testify that would help me decide this case."

We conclude the juvenile court did not abuse its discretion in finding good cause for a continuance to allow the prosecution to interview and call Jonathan as a rebuttal witness.

C. Probation Conditions

Appellant objects to three of the probation conditions imposed by the juvenile court as both unconstitutionally vague and overbroad.

Under section 730, subdivision (b), a juvenile court may impose "any and all reasonable conditions that it may determine fitting and proper to the end that justice may be done and the reformation and rehabilitation of the ward enhanced." (§ 730, subd. (b).) "A probation condition 'must be sufficiently precise for the probationer to know what is required of him, and for the court to determine whether the condition has been violated,' if it is to withstand a challenge on the ground of vagueness. [Citation.]" (*In re Sheena K.* (2007) 40 Cal.4th 875, 890 (*Sheena K.*).) The "underpinning of a vagueness challenge is the due process concept of 'fair warning.' [Citation.]" (*Ibid.*) "A probation condition which either forbids or requires the doing of an act in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application, violates due process." (*People v. Freitas* (2009) 179 Cal.App.4th 747, 750

(*Freitas*), disapproved on other grounds in *People v. Hall* (2017) 2 Cal.5th 494 (Hall).) A probation condition is unconstitutionally overbroad "if it imposes limitations on the probationer's constitutional rights and it is not closely or narrowly tailored and reasonably related to the compelling state interest in reformation and rehabilitation. [Citations.]" (*People v. Forrest* (2015) 237 Cal.App.4th 1074, 1080 (*Forrest*).)

Appellant failed to object to the probation conditions before the juvenile court, but an appellant may raise an argument for the first time on appeal that a probation condition is unconstitutionally vague or overbroad on its face when the challenge presents a pure question of law that the appellate court can resolve without reference to the sentencing record. (*Sheena K.*, *supra*, 40 Cal.4th at pp. 887–889; *In re Kevin F.* (2015) 239 Cal.App.4th 351, 357 (*Kevin F.*).)

1. School Attendance

Appellant argues the condition requiring him to "attend school regularly" is unconstitutionally vague and overbroad. The condition failed to define the term "regularly" which is subject to interpretation. Appellant recognizes that this precise issue was raised and rejected by this division in *In re Ana C.* (2016) 2 Cal.App.5th 333 (*Ana C.*), disapproved on another ground in *Hall*, *supra*, 2 Cal.5th at pp. 503-504, fn. 2), but asks that we revisit our holding. We decline to do so.

In declining to revisit our analysis and holding on this issue, we note also that two months following the filing of *Ana C.*, Division One of this court rejected a similar argument objecting to a probation condition requiring a minor to "attend school regularly." (*In re D.H.* (2016) 4 Cal.App.5th 722.) Our colleagues held that the attendance condition was not unconstitutionally vague when combined with the requirement the minor "obey school rules." (*Id.* at p. 730.) The probation condition must be evaluated in context applying " 'common sense' " to interpret the condition to require the minor to attend school when it is in session and during regular school hours. (*Ibid*.) The purpose of the condition is to prevent truancy and the phrasing of the condition is clear enough for an average juvenile to understand.

The condition here requires appellant to "[a]ttend school regularly. Obey school rules and regulations." Under both *Ana C.* and *In re D.H.*, this is not unconstitutionally vague or overbroad and requires no modification.

2. Possession of Illegal Drugs and Drug Paraphernalia

The court imposed the following drug condition: "Don't use, possess, or be under the influence of alcohol or illegal drugs or possess any associated paraphernalia." Appellant objects to the term "associated paraphernalia" as vague and overbroad and contends the condition lacks a necessary scienter requirement. Respondent does not object to the condition being modified to include a prohibition on the knowing possession of drug paraphernalia.

We reject appellant's request to find the drug condition as a whole requires a scienter requirement. In *Hall*, our Supreme Court considered a drug condition which stated the probationer " 'shall not use or possess or have in [his] custody or control any illegal drugs, narcotics, [or] narcotics paraphernalia without a prescription.' " (*Hall*, *supra*, 2 Cal.5th at p. 498.) The court concluded the condition contained an implicit knowledge requirement and was not unconstitutionally vague because it afforded the probationer fair notice of the conduct required of him. (*Ibid.*) "California case law already articulates not only a general presumption that a violation of a probation condition must be willful, but also specifically provides that probation conditions barring possession of contraband should be construed to require knowledge of its presence and its restricted nature. (See generally *In re Trombley* (1948) 31 Cal.2d 801, 807 . . . .)" (*Hall*, at p. 501.)

Appellant contends that the term "associated paraphernalia" in the condition is ambiguous. We agree. The revised condition should simply state "drug paraphernalia" as set forth above. We order the condition modified to read: "Do not use, possess or be under the influence of alcohol or illegal drugs or possess any drug paraphernalia."

3. Possession of Any Weapon or Replica of a Firearm

The final condition appellant objects to is: "Do not be in possession of any weapon, including firearm, explosive, knife, or replica of a firearm." Appellant contends

that the terms "any weapon" and "replica of a firearm" in the condition are unconstitutionally vague. Appellant further contends the condition requires a scienter requirement.

We agree with appellant that the phrase "any weapon" may not provide sufficient guidance on what constitutes a weapon. The condition should be modified to prohibit appellant from possessing or using a "deadly or dangerous weapon." (See *In re R.P.* (2009) 176 Cal.App.4th 562; *People v. Moore* (2012) 211 Cal.App.4th 1179, 1186.) The "phrase 'dangerous or deadly weapon' is clearly established in the law" and sufficient for a minor to know what is required of him. (*In re R.P.*, *supra*, 176 Cal.App.4th at p. 568.)

We, however, reject appellant's argument that the use of the term "replica of a firearm" is unconstitutionally vague. In *Forrest*, the probation condition prohibited possession of a "replica firearm or weapon." (*Forrest*, *supra*, 237 Cal.App.4th at p. 1081, italics omitted.) The court held the term "replica" was not unconstitutionally vague. (*Ibid*.) "Forrest is on fair notice she is prohibited from using or possessing actual firearms or weapons and she is also prohibited from confronting others with devices those individuals could reasonably perceive to be a weapon or firearm. The term 'replica firearm or weapon' adequately conveys this prohibition. [Citation.]" (*Ibid.*) The court cited to Penal Code section 16700, which defines an imitation firearm to include a replica. (*Id.* at p. 1082; Pen. Code, § 16700, subd. (a)(1) [an imitation firearm is defined as any BB device, toy gun, replica of a firearm, or "other device that is so substantially similar in coloration and overall appearance to an existing firearm as to lead a reasonable person to perceive that the device is a firearm"].) The term "replica of a firearm" is not unconstitutionally vague and does not require modification.

We also reject appellant's contention that the condition should be modified to include a knowledge requirement. In *Hall*, the weapons condition at issue stated the defendant "may not own, possess or have in [his] custody or control any handgun, rifle, shotgun or any firearm whatsoever or any weapon that can be concealed on [his] person." (*Hall*, *supra*, 2 Cal.5th at p. 498.) The defendant challenged the condition as unconstitutionally vague because it lacked a knowledge requirement. As explained above

with regard to the drug condition, our Supreme Court concluded the condition included an implicit knowledge requirement. (*Ibid.*) "Just as most criminal statutes—in all their variety—are generally presumed to include some form of mens rea despite their failure to articulate it expressly, so too are probation conditions generally presumed to require some form of willfulness, unless excluded ' "expressly or by necessary implication." ' [Citation.]" (*Id*. at p. 502.) The court held in regard to both the drug and weapons conditions: "Because no change to the substance of either condition would be wrought by adding the word 'knowingly,' we decline defendant's invitation to modify those conditions simply to make explicit what the law already makes implicit." (*Id.* at p. 503, fn. omitted.)

In light of these authorities, we conclude the condition should be modified to read: "Do not possess any dangerous or deadly weapon, including firearm, explosive, knife or replica of a firearm."

IV.

DISPOSITION

The dispositional order is affirmed with the following modifications to the probation conditions:

1. The condition that currently reads: "Don't use, possess, or be under the influence of alcohol or illegal drugs or possess any associated paraphernalia," is **modified** to read: "Do not use, possess, or be under the influence of alcohol or illegal drugs or possess any drug paraphernalia."
2. The condition that currently reads: "Do not be in possession of any weapon, including firearms, explosive, knife or replica of a firearm," is **modified** to read: "Do not possess any dangerous or deadly weapon, including firearm, explosive, knife, or replica of a firearm."

_____
RUVOLO, P. J.

We concur:

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REARDON, J.

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RIVERA, J.